



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG-2012-0939]

RIN 1625-AA00

Safety Zone; Steam Ship Col. James M. Schoonmaker

Relocation Project, Maumee River, Toledo, OH

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary Safety Zone on the waters of Maumee River, Toledo, Ohio, in support of the relocation of S/S Col. James M. Schoonmaker (hereinafter referred to as 'the Schoonmaker'). This temporary safety zone will encompass all waters of the Maumee River within a 100 yard radius of the Schoonmaker as it makes its transit from International Park to Skyway Marina. This temporary Safety Zone is necessary to protect persons operating around the area.

DATES: This regulation is effective from 10:00 a.m. on October 27, 2012 until 4:00 p.m. on November 3, 2012.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being

available in the docket, are part of docket USCG-2012-0939 and are available online by going to <http://www.regulations.gov>, inserting USCG-2011-0195 in the "Keyword" box, and then clicking "Search." This material is also available for inspection or copying at the Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail LT Mallorie Schell, Prevention Department, MSU Toledo, Coast Guard; telephone (419)418-6030, e-mail Mallorie.G.Schell@uscg.mil. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of Proposed Rulemaking

A. Regulatory History and Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because doing so would be impracticable and contrary to the public interest. Although the Coast Guard has known about the relocation of the Schoonmaker for several weeks, only recently did the Coast Guard become aware of an expected high volume of spectator vessel traffic. Consequently, the need for this safety zone was not identified until there was insufficient time to allow a full comment period to run. Thus, waiting for a comment period to run prior to enforcing this safety zone would inhibit the Coast Guard's ability to protect the public and vessels from the hazards associated with the heightened spectator activity associated with the relocation of the Schoonmaker.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the Federal Register. For the same reasons discussed above about not publishing an NPRM, the Coast Guard finds that waiting for a 30 day notice period to run would be impracticable and contrary to the public interest.

B. Basis and Purpose

The legal basis for the rule is the Coast Guard's authority to establish regulated navigation areas and limited access areas: 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

The Great Lakes Historical Society (GLHS) is relocating the Schoonmaker from International Park to Skyway Marina. This relocation is scheduled for October 27, 2012. If the relocation of the vessel on October 27 is cancelled for any reason, this safety zone will be effective and enforced from 10:00 a.m. until 4:00 p.m. on October 28, 2012. Likewise, if relocation on October 28th is cancelled, this safety zone will be effective and enforced from 10:00 a.m. until 4:00 p.m. on November 3, 2012. In light of the expected volume of spectator

activity, the Captain of the Port Detroit has determined that this operation could pose certain public hazards, such as the increased risk of collisions.

C. Discussion of Rule

With aforementioned hazards in mind, the Captain of the Port Detroit has determined that a safety zone is necessary to ensure the safety of participants and vessels during the operation. The temporary safety zone is established herein will be effective and enforced from 10:00 a.m. until 4:00 p.m. on October 27, 2012. If the relocation of the vessel on October 27 is cancelled for any reason, this safety zone will be effective and enforced from 10:00 a.m. until 4:00 p.m. on October 28, 2012. Likewise, if relocation on October 28 is cancelled, this safety zone will be effective and enforced from 10:00 a.m. until 4:00 p.m. on November 3, 2012.

Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port, Sector Detroit or his designated on scene representative. The Captain of the Port, Sector Detroit or his designated on scene representative may be contacted via VHF Channel 16. All persons and vessels allowed to enter the safety zone shall comply with the instructions of the

Coast Guard Captain of the Port, designated on scene patrol personnel, or operation personnel.

D. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on these statutes or executive orders.

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under these Orders. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS). We conclude that this rule is not a significant regulatory action because we anticipate that it will have minimal impact on the economy, will not interfere with other agencies, will not adversely alter the budget of any grant or loan recipients, and will not raise any novel legal or policy issues. The temporary safety zone created by this rule

will be relatively small and enforced for relatively short time. Also, the temporary safety zone is designed to minimize its impact on navigable waters. Furthermore, the temporary safety zone has been designed to allow vessels to transit around it. Thus, restrictions on vessel movement within that particular area are expected to be minimal. Under certain conditions, moreover, vessels may still transit through the temporary safety zone.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601-612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit through the Maumee River, OH between 10:00 a.m. and 4:00 p.m. on October 27, or 28 or November 3, 2012.

This temporary safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: this rule will be in effect for only approximately six hours. In the event that this

temporary safety zone affects shipping, commercial vessels may request permission from the Captain of the Port, Sector Detroit to transit through the safety zone. The Coast Guard will give notice to the public via a Broadcast Notice to Mariners that the regulation is in effect.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If this rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain

about this rule or any policy or action of the Coast Guard.

4. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and determined that this rule does not have implications for federalism.

6. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do

discuss the effects of this rule elsewhere in this preamble.

7. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

8. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

9. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

10. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on

the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

11. Energy Effects

This action is not a "significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

12. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

13. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone and, therefore it is categorically excluded from further review under paragraph (34)(g) of Figure 2-1 of the Commandant Instruction. An environmental analysis

checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under ADDRESSES. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

List of Subjects in 33 CFR Part 165

Harbors, Marine Safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Part 165 as follows:

PART 165--REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 46 U.S.C. Chapters 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T09-0939 as follows:

§ 165.T09-0939 Safety Zone; Steam Ship Col. James M. Schoonmaker relocation project, Maumee River, Toledo, OH.

(a) Location. The following area is a temporary safety zone: all waters of the Maumee River within a 100 yard radius of the S/S Col. James M. Schoonmaker as it

makes its transit from International Park at position 41° 38'30.00"N; 083° 31'55.50"W to Skyway Marina at approximate position 41° 39'26.30"N; 083° 30'55.25"W. All geographic coordinates are North American Datum of 1983 (NAD 83).

(b) Effective and Enforcement Period. This regulation is effective from 10:00 a.m. on October 27, 2012 until 4:00 p.m. on November 3, 2012. It will be enforced from 10:00 a.m. until 4:00 p.m. on October 27, 2012. If the relocation of the vessel on October 27 is cancelled for any reason, this safety zone will be effective and enforced from 10:00 a.m. until 4:00 p.m. on October 28, 2012. Likewise, if a relocation on October 28 is cancelled, this safety zone will be effective and enforced from 10:00 a.m. until 4:00 p.m. on November 3, 2012.

(c) Definitions. The following definitions apply to this section:

(1) "On-scene Representative" means any Coast Guard Commissioned, warrant, or petty officer designated by the Captain of the Port Detroit to monitor a safety zone, permit entry into the zone, give legally enforceable orders to persons or vessels within the zones, and take other actions authorized by the Captain of the Port.

(2) "Public vessel" means vessels owned, chartered, or operated by the United States, or by a State or political

subdivision thereof.

(d) Regulations. (1) In accordance with the general regulations in § 165.23 of this part, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port Detroit, or his designated representative.

(2) This safety zone is closed to all vessel traffic, except as may be permitted by the Captain of the Port Detroit or his designated representative. All persons and vessels must comply with the instructions of the Coast Guard Captain of the Port or his designated representative. Upon being hailed by the U.S. Coast Guard by siren, radio, flashing light or other means, the operator of a vessel shall proceed as directed.

(3) All vessels must obtain permission from the Captain of the Port or his designated representative to enter, move within, or exit the safety zone established in this section when this safety zone is enforced. Vessels and persons granted permission to enter the safety zone must obey all lawful orders or directions of the Captain of the Port or a designated representative. While within a

safety zone, all vessels must operate at the minimum speed necessary to maintain a safe course.

(e) Exemption. Public vessels, as defined in paragraph (b) of this section, are exempt from the requirements in this section.

Dated: October 11, 2012

D.V. SMITH
Commander, U.S. Coast Guard
Acting Captain of the Port Detroit

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